Kesatuan Pekerja-Pekerja Perusahaan Dunlop Malaysia v DMIB Bhd

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO W-04-64 OF 1997

ABDUL HAMID MOHAMAD, KC VOHRAH AND ALAUDDIN JJCA

19 JUNE 2002

Labour Law — *Industrial Court — Jurisdiction — Industrial Court made award to allow implementation of the Rota Work System — Whether Industrial Court acted in excess of its jurisdiction or without jurisdiction — Whether the Rota Work System proven to be detrimental, socially or financially to Union members by virtue of s 30 of the Industrial Relations Act 1967 — Industrial Relations Act 1967 s 30*

The Industrial Court became seized of a dispute, which was referred to the court on a joint request by DMIB Bhd ('the company') and the Kesatuan Pekerja-Pekerja Perusahaan Dunlop Malaysia ('the Union'). The company and the Union had negotiated for a new collective agreement. The company proposed to introduce the 'Rota Work System' in one of its factories. The Industrial Court made an award that the company be allowed to implement the Rota Work System. There was an application filed before the High Court for certiorari to quash the award, the Union alleging that the Industrial Court had acted in excess of its jurisdiction or without jurisdiction. The learned judicial commissioner of the High Court dismissed the application stating that the Industrial Court had not committed any error of law and had correctly approached the facts of the case. The Union appealed to the Court of Appeal.

Held, dismissing the appeal:

(1) In the Industrial Court, the Union chose not to call any witness to give evidence in examination in chief and the court failed to see how cross-examination could at all arise. The practice in court was for a witness for a party be sworn in, be examined in chief by the party calling him either at length before cross-examination or examined briefly and then offered for cross-examination. This was not done and a mere offer of witnesses for cross-examination without the witnesses giving (evidence in chief) is worthless. In this context, it was indeed for the Union to show to the Industrial Court why their members objected to the Rota Work System and why the system should not be implemented. The Union failed to call any witness to show in what way the Rota Work System would be detrimental, socially or financially to their members and that the failure to rebut the company's evidence was 'therefore fatal to the Union's case' (see p 546B, G–I).

(2) It was not expressly provided in the collective agreement that Sunday was the permanent rest day, or there was any evidence adduced in court that the Sunday rest day was an existing benefit.

Article 5(a) of the collective agreement did allow for the implementation of the Rota Work System (see p 548C).

(3) The Industrial Court had specifically referred to the requirement of s 30 of the Industrial Relations Act 1967 to have regard to the public interest, the financial implication and the effect on the economy of the country and on the industry concerned and also the probable effect in related or similar industries and to act according to equity and good conscience and the substantial merits of the case without regard to technical or legal form and held the requirements as having been met. The court also was of the view that the requirements had been met. The finding was a straight forward finding and there was no ground whatsoever to interfere with such a finding (see p 548G–I).

[Bahasa Malaysia summary

Mahkamah Perusahaan telah dihadapkan dengan satu pertikaian, yang dirujuk kepadanya di atas permintaan bersama DMIB Bhd ('syarikat tersebut') dan Kesatuan Pekerja-Pekerja Perusahaan Dunlop Malaysia ('Kesatuan tersebut'). Syarikat tersebut serta Kesatuan tersebut telah berunding bagi menetapkan satu perjanjian kolektif baru. Syarikat tersebut berhasrat memperkenalkan 'Sistem Kerja Bergiliran' dalam salah satu kilangnya. Mahkamah Perusahaan telah mengeluarkan award membenarkan syarikat tersebut menguatkuasakan Sistem Kerja Bergiliran. Permohonan telah difailkan di Mahkamah Tinggi untuk perintah certiorari bagi membatalkan award tersebut, di mana Kesatuan tersebut mengatakan bahawa Mahkamah Perusahaan telah melampaui atau bertindak tanpa bidang kuasa. Pesuruhjaya Kehakiman yang arif telah menolak permohonan tersebut mengatakan bahawa Mahkamah Perusahaan tidak melakukan sebarang kesilapan dari segi undang-undang dan telah mengambil pendekatan yang tepat bagi kes ini. Kesatuan tersebut telah merayu kepada Mahkamah Rayuan.

Diputuskan, menolak rayuan tersebut:

(1) Dalam Mahkamah Perusahaan, Kesatuan tersebut telah memilih untuk tidak memanggil sebarang saksi bagi memberi keterangan dalam pemeriksaan utama dan mahkamah ini tidak dapat lihat bagaimana sebarang pemerikssan balas dapat timbul. Amalan dalam mahkamah adalah bagi saksi sesuatu pihak dipanggil dan diperiksa utama sebelum pemeriksaan balas ataupun diperiksa secara ringkas dan kemudian ditawarkan untuk pemeriksaan balas. Ini tidak dilakukan dan satu tawaran saksi-saksi semata-mata bagi periksaan balas tanpa saksi memberikan sebarang keterangan utama adalah tidak berguna. Dalam konteks ini, adalah menjadi tanggungjawab Kesatuan tersebut menunjukkan kepada Mahkamah Perusahaan mengapa ahli-ahli mereka

menentang Sistem Kerja Bergiliran dan mengapa sistem ini tidak harus dikuatkuasakan. Kesatuan tersebut telah gagal memanggil sebarang saksi untuk menunjukkan bagaimana Sistem Kerja Bergiliran ini memudaratkan, dari segi sosial mahupun kewangan kepada ahli-ahlinya dan kegagalan untuk menentang keterangan syarikat membawa kepada kegagalan kes Kesatuan tersebut (lihat ms 546B, G–I).

(2) Tiada peruntukan di dalam perjanjian kolektif yang menyatakan bahawa hari Ahad adalah hari rehat tetap ataupun sebarang keterangan di Mahkamah yang menyatakan bahawa hari Ahad adalah hari rehat yang tetap. Perkara 5(a) perjanjian kolektif ada membenarkan perlaksanaan Sistem Kerja Bergiliran (lihat ms 548C).

(3) Mahkamah Perusahaan telah secara spesifik merujuk kepada keperluan s 30 Akta Perhubungan Perindustrian 1967 untuk menimbangkan kepentingan awam, implikasi kewangan dan kesannya pada ekonomi negara dan industri yang terlibat dan juga kesan kepada industri-industri yang sepertinya dan bertindak mengikut ekuiti dan kemurnian dan atas merit-merit yang kukuh kes tersebut tanpa bergantung kepada peraturan teknikal atau perundangan dan berpendapat bahawa semua peruntukkan telah ditepati. Mahkamah juga berpendapat bahawa semua keperluan-keperluan tersebut telah dipenuhi. Penemuan tersebut adalah satu penemuan yang jelas dan tidak terdapat sebarang alasan untuk mempersoalkannya (lihat ms 548G–I).]

Notes

For cases on jurisdiction of the Industrial Court, 8 *Mallal's Digest* (4th Ed, 2001 Reissue) paras 1248–1298.

Cases referred to

Ashbridge Investment Ltd v Minister of Housing and Local Government [1965] 3 All ER 371 (refd)

Fujisash (M) Sdn Bhd Prai v Kesatuan Pekerja-Pekerja Perusahaan Logam [1993] 2 ILR 270 (refd)

Harpers Trading Sdn Bhd v National Union of Commercial Workers [1991] 1 MLJ 417 (refd)

Nestle Food (M) Sdn Bhd v Kesatuan Pekerja-Pekerja Perkilangan Perusahaan Makanan [1995] 1 ILR 249 (refd)

Legislation referred to

Employment Act 1955 s 59(1)
Industrial Relations Act 1967 ss 26(1), 30(4), (5), (6), 54(1), (3)
Rules of the High Court 1980 O 53

Appeal from: Originating Motion No R1–25–30 of 1996 (High Court, Kuala Lumpur)

B Lobo (*LG Seah* with him) (*Lobo & Assoc*) for the appellant. A
N Sivabalah (*Shearn Delamore*) for the respondent.

KC Vohrah JCA (delivering the judgment of the court): Under s 26(1) of the Industrial Relations Act 1967 ('the Act') where a trade dispute exists or is apprehended, the minister may, if that dispute is not otherwise resolved, refer the dispute to the court on the joint request in writing to the minister B by the trade union of workmen which is a party to the dispute and the employer who is a party to the dispute or a trade union of employers which is a party to the dispute.

The Industrial Court became seized of a dispute which was referred to the court on a joint request by DMIB Bhd ('the company') and the Kesatuan Pekerja-Pekerja Perusahaan Dunlop Malaysia ('the Union'). C

The company and the Union had negotiated for a new collective agreement. The company proposed to introduce the 'Rota Work System' in its factory in Petaling Jaya.

Under the then system, the company had operated six days a week. To enable the company to operate continuously seven days a week and D purportedly thereby increase production, the Rota Work System was proposed to be introduced.

Under the Rota Work System, the weekly day of rest of the employees in the factory rotate instead of a fixed day of rest in a week.

Both the Union and the company by their joint letter dated E 5 September 1994 wrote to the minister:

> Yang Berhormat,
>
> RE: JOINT REFERENCE UNDER SECTION 26(1) OF THE INDUSTRIAL RELATIONS ACT 1967
>
> We humbly refer to the above matter and wish to inform Yang Berhormat that a trade dispute exists between DMIB Berhad ('the company') and DMIB Berhad Employees Union (DBEU) ('the Union') over the company's intention to implement the 'Rota Work System' in the company. The Rota Work System is a system wherein the employees weekly rest day shall be in accordance with the company's roster normally set out before the commencement of each month. G
>
> The company and the Union hereby make this humble joint request in writing under s 26(1) of the Industrial Relations Act 1967 seeking the consent of Yang Berhormat to refer the aforesaid trade-dispute to the Industrial Court.

After the reference was registered in the Industrial Court, the parties filed their respective pleadings and thereafter the trade dispute was heard by the H Industrial Court.

The managing director of the company gave evidence on behalf of the company. The Union, however, did not call any witnesses in support of their case save to offer its officers for cross-examination.

The Industrial Court on 26 February 1996 handed down its decision in I Award No 65 of 1996 dated 26 February 1996. The court made an award that the company be allowed to implement the Rota Work System.

There was an application under O 53 of the Rules of the High Court 1980 filed before the High Court for certiorari to quash the award, the Union alleging that the Industrial Court had acted in excess of its jurisdiction or without jurisdiction. The learned judicial commissioner of the High Court dismissed the application stating that the Industrial Court had not committed any error of law and had correctly approached the facts of the case. The Union has appealed to the Court of Appeal against the decision of the High Court.

Before us, the decision of the High Court is attacked on lengthy grounds and we will come to these later.

At the Industrial Court hearing, the company and the Union were 'at odds with regard to what is the status of their present weekly day of rest'. The Union contended that Sunday had been a fixed weekly day of rest for all employees since the inception of the business operations of the company and this had crystallized into a term and condition of employment. The company disagreed and contended that it was never an express or implied term that Sunday was the permanent fixed weekly day of rest incapable of being changed. This was one of the strong issues of the dispute.

It must be pointed out that the Industrial Court was aware that the parties had in fact concluded a new collective agreement on 5 September 1994 agreeing on all terms and conditions of employment except for the Rota Work System proposed by the company. It was this issue relating to the Rota Work System which, as was previously pointed out, was jointly requested by the parties to be referred to the minister who agreed and so referred the matter to the Industrial Court.

At the time the pleadings were filed the new collective agreement had been deposited with the Industrial Court and was pending cognizance. However, when the hearing commenced the court was informed that the registrar, following the learned president's instruction, had rejected the new collective agreement and had not given it cognizance.

The Industrial Court declined to inquire as to why it was rejected and directed the parties to confine their attention to the dispute referred to the court, ie the Rota Work System proposed by the company.

We now come to the first ground of appeal which was pursued before the High Court and before us, ie that the Industrial Court had acted in breach of s 54 of the Act and therefore had exceeded its jurisdiction when making the award. The learned judicial commissioner had ruled in his judgment that there was no breach of the said s 54.

It will be remembered that the new collective agreement deposited in the Industrial Court had been rejected by the president and not given cognisance and the Industrial Court hearing the dispute had declined to inquire why that was so. The Industrial Court had ruled it would confine itself only on the dispute referred to the Court, ie the Rota Work System proposed by the company.

The Industrial Court then admitted certain annexures to the new collective agreement. We would like to refer to what the Industrial Court

had stated on this issue. The Union had objected to the admission of the annexures pointing out to the Industrial Court that the annexures, some of which are letters between the company and the Union's officials, were not signed by all the signatories of the agreement. It was also pointed out that one of the letters, for example, dated 5 September 1994 (which is also the date of the new collective agreement) was written by the company's Industrial Relations Manager to the General Secretary of the Union. This letter also referred to another letter of understanding dated 24 June 1991 (on the Rota Work System).

The Industrial Court had in its award noted that this letter of understanding dated 5 September 1994 states that the company wished to affirm its commitment to the letter of understanding dated 24 June 1991 to the extent that upon implementation of the Rota Work System the company shall restore the quantum of 2.75 months bonus into overtime computation of employees so involved in the system. The Union submitted that these documents did not form part of the new collective agreement. Further, it was submitted that they should be excluded under s 54 of the Act.

The Industrial Court ruled that these annexures which were letters between the parties were relevant to the dispute and the Industrial Court also made a finding that these letters were not written during the negotiation to which the trade dispute before the Industrial Court related. The Industrial Court found that the letter of understanding was written on 24 June 1991 and noted that the trade dispute had not arisen at that time. The Industrial Court overruled the objection and admitted the annexures as part of the collective agreement.

Before the learned judicial commissioner and before us, the learned counsel for the Union argued that the Industrial Court was wrong in admitting the letters contrary to the mandatory requirements of sub-ss (1) and (3) of s 54 of the Act as they relate to negotiation or conciliation proceedings or offer relating to a matter connected with the trade dispute. The relevant provisions read:

> (1) Where a trade dispute relates to matters as to which negotiation or conciliation proceedings have taken place under this Act, no evidence shall be given in the proceedings before the Court as to such negotiation or conciliation proceedings other than a written statement in relation thereto agreed to and signed by the parties to the dispute.
>
> (2) ...
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> (3) No evidence shall be given in proceedings before the court with regard to any offer relating to any matter connected with the trade dispute made without prejudice by any person or trade union except with the consent of that person or trade union.

Having perused sub-ss (1) and (3) of s 54 of the Act, we do not agree with the view of the learned judicial commissioner that the learned chairman of the Industrial Court was correct when he observed that the letters were not written during the negotiation to which this trade dispute relates. Certainly some of the letters including the letter of understanding dated 5 September 1994, do make a reference to the statement that both parties shall jointly

refer the matter of 'Rota Work System' to the Industrial Court. But having said that, we, however, agree with the learned judicial commissioner when he held that the Industrial Court had properly admitted the documents. These documents show that the terms referred therein had already been made firm and had been agreed to and were actual written agreements between the parties (see pp 396–418, vol 2 of the appeal record) and thus, they are not caught by sub-s (1) and (3) of s 54 of the Act, which merely exclude evidence of any negotiations, conciliations or offers made without the other party's agreement. We also agree with the learned judicial commissioner that it is pertinent to note that the two letters complained of were not even relied on by the Industrial Court as the basis of the award.

It is clear, in fact, that the Industrial Court had based its decision on the company's reasons for implementing the Rota Work System, the Union's failure to adduce any evidence in rebuttal, and the law relating to the implementation of such a system. The Industrial Court in its award examined the evidence of En Md Ja'afar bin Abdul Carim, the Managing Director of the company. The award deals with his evidence running to four pages with its analysis, observation of law and findings. To state it in a short compass, the witness gave evidence on the proposal to rotate the weekly day of rest instead of having a fixed day and the reasons therefor and examined the system's impact on the tyre industry and similar industry, the state of the economy vis-a-vis competition from imported tyres and the effect on the workers. His evidence was to the effect that it was necessary for the tyre business to survive severe competition from imported tyres after a reduction of tariff and expected further reduction of tariff after WTO negotiation and for operational reasons. The Union objected to the system on the ground that the system would be to the social and monetary detriment of the employees.

And with that we come to the next connected grounds of appeal of the Union which can be summarized as that the judicial commissioner erred in law when he held the evidence of the witness of the company was not rebutted and remained unchallenged since the company's witness was cross-examined at length and the Union had offered its witnesses for cross-examination and that the initial burden of proof had been discharged by this offer of witnesses.

In our view there is no merit in any of the grounds.

The learned judicial commissioner had stated that based on the evidence before him, the learned chairman of the Industrial Court could not have come to any other conclusion as he did on the award. He held that had the Industrial Court come to an opposite finding, its decision would have been against the weight of the evidence and, therefore, unreasonable. He was of the view that it was the company which gave evidence through its sole witness to justify the company's need to implement the Rota Work System and observed, quite correctly, that since the Union chose not to call any witnesses to rebut the company's witness' testimony, accordingly the company's witness' testimony remained unchallenged. We have ourselves

examined the notes of proceedings in the appeal record and note that out of 21 pages of cross-examination (see pp 548–569, vol 2 of the appeal record) while there were challenges made to the testimony of this witness relating to some aspects of his evidence concerning the Union's view that the system would be to the social and monetary detriment of the employees and that Sunday had become a day of rest, answers of the witness certainly did not indicate agreement with the Union's view.

The learned judicial commissioner observed relevantly that the Union failed to call any witness to show in what way the Rota Work System would be detrimental, socially or financially to their members and that the failure to rebut the company's evidence was 'therefore fatal to the Union's case'. It is to be observed that in the notes of proceedings (see p 578, vol 2 of the appeal record) this is recorded:

> Mr Lobo does not propose to call any witness as he believes that the company has not discharged its burden and offers his witnesses to the company.
>
> Mr Nathan says the President and Secretary (of the Union) have been listening in court therefore it serves no purpose?

The learned judicial commissioner in his judgment held that a mere offer of witnesses for cross-examination (as indeed the note indicates) without the witnesses giving evidence is worthless.

Counsel for the Union has attacked this ruling. For ourselves we are puzzled by the fact that counsel for the Union did not propose to call any witness and quite contradictorily offered his witnesses for cross-examination. Counsel has cited *Sarkar's Law of Evidence* (14th Ed, Vol 1) at pp 1991, 1998 and 2166 and argued that the Industrial Court had failed to note that the initial burden of proof in the pleadings was on the company and that therefore the Union's offer of its witnesses for cross-examination was sufficient to discharge its evidential burden. With respect to the counsel, we cannot find that stated anywhere in *Sarkar* but what *Sarkar* does state is that if the adverse party has had liberty to cross-examine and has not chosen to exercise it, the case is the same as if he had cross-examined; 'that wherever the opponent has declined to avail himself of the offered opportunity it must be supposed to have been taken that the testimony could not and need not be disputed at all be shaken by cross-examination'. Obviously, the offered opportunity is that of cross-examining a person who has been sworn in as a witness of the party calling him. In the Industrial Court, the Union chose not to call any witness to give evidence in examination in chief and we fail to see how cross-examination could at all arise. The practice in court is for a witness for a party be sworn in, be examined in chief by the party calling him either at length before cross-examination or examined briefly and then offered for cross-examination. This was not done and the learned judicial commissioner was perfectly correct when he held that a mere offer of witnesses for cross-examination without the witnesses giving (evidence in chief) is worthless. In this context, we do agree with the learned judicial commissioner that it was indeed for the Union to show to the Industrial Court why their members objected to the Rota Work System and why the system should not be implemented. The

learned judicial commissioner held that the Union had failed to do so and he observed that the Industrial Court, after careful scrutiny of the facts, made certain findings of fact, and since the Union did not give any evidence to rebut the company's case, the Industrial Court was therefore justified in coming to its conclusion on the facts. We entirely agree that this is not a case where the Industrial Court had acted on no evidence or had come to a conclusion which on the evidence it could not reasonably come to (see *Ashbridge Investment Ltd v Minister of Housing and Local Government* [1965] 3 All ER 371); nothing was adduced to show that the Rota Work System was a perverse system by rebuttal or controverted evidence. These are matters of fact for the Industrial Court to determine and the High Court never sits on appeal in review cases to disturb the findings of facts. This has been reiterated time and again. In *Harpers Trading Sdn Bhd v National Union of Commercial Workers* [1991] 1 MLJ 417, this was what Jermuri Serjan SCJ said at p 419:

> At the hearing of this appeal we drew at the earliest opportunity the attention of counsel for the appellant while submitting his arguments on the first three grounds that the High Court was not concerned with an appeal but with judicial review by way of certiorari as we felt that counsel was really engaged in arguing the appeal on the merits of the trade dispute. We invited counsel to address us on why certiorari should be granted to the appellant instead of making his submission on the question of erroneous finding of the Industrial Court on the facts as it found them. It seems to us that it should be treated as trite law that judicial review is not an appeal from a decision but a review of the manner in which the decision was made and the High Court is not entitled on an application for judicial review to consider whether the decision itself, on the merits of the facts, was fair and reasonable. There is no dearth of authorities on this proposition — *Tan Hin Jin & Anor v Prabhulal G Doshi* [1971] 1 MLJ 274 per Azmi LP at p 275 quoting Morris LJ in *R v Northumberland Compensation Appeal Tribunal, ex p Shaw* [1952] 1 KB 338 at p 357; *Minister of Labour and Manpower & Anor v Paterson Candy (M) Sdn Bhd* [1980] 2 MLJ 122 per Chang Min Tat FJ at p 125; *Hotel Equatorial (M) Sdn Bhd v National Union of Hotel, Bar and Restaurant Workers* [1984] 1 MLJ 363; per Seah FJ at p 368 and *Goon Kwee Phoy v J & P Coats (M) Bhd* [1981] 2 MLJ 129, per Raja Azlan Shah CJ (Malaya) (as he then was) at p 136 paras A–C in the right hand column.

The learned judicial commissioner had dealt with the complaint that the Industrial Court acted beyond the scope of the statutory reference in that by allowing the Rota Work System, the Industrial Court had encroached into the existing collective agreement contrary to art 33 (relating to rest day), art 34 (relating to working hours) and art 48 (relating to existing benefits). The learned judicial commissioner examined arts 33, 34 and 48 and held that the Industrial Court was fully entitled to allow the Rota Work System to be implemented by the company. The Union before us says the learned judicial commissioner was wrong in his ruling. He had held that art 33 is silent on Sunday being the permanent rest day and that the implementation of the Rota Work System is not contrary to the existing collective agreement. He further held that it falls squarely within art 5(a) of the collective agreement which reads:

> The Union recognizes the right of the company to operate and manage its business in all respects including the right to engage, discipline, suspend or discharge for proper cause, to determine the manning of its operations and the allocation of duties to its employees.

We agree with the views of the learned judicial commissioner. It is the prerogative of the company to operate and manage its business in the manner it thinks benefits it and there have been precedents for the Rota Work System as was pointed out by the learned judicial commissioner, and we note, the Industrial Court had in two earlier decisions. *Nestle Food (M) Sdn Bhd v Kesatuan Pekerja-Pekerja Perkilangan Perusahaan Makanan* [1995] 1 ILR 249 and *Fujisash (M) Sdn Bhd Prai v Kesatuan Pekerja-Pekerja Perusahaan Logam* [1993] 2 ILR 270 endorsed the system. We also note that since, as was observed by the learned judicial commissioner, it is not expressly provided in the collective agreement that Sunday is the permanent rest day, or there was any evidence adduced in court that the Sunday rest day was an existing benefit. Article 5(a) does allow for the implementation of the Rota Work System. Not to be missed is that s 59(1) of the Employment Act 1955 confers the right on the employer to determine the rest day in a week. Section 59(1) states:

> Every employee shall be allowed in each week a rest day of one whole day as may be determined from time to time by the employer ...

The next ground which has been taken is that the judicial commissioner had erred in law and in fact when he held that in making the award the Industrial Court had taken the policy and purpose of the Act into account when the Industrial Court did not take into account sub-ss (4), (5) and (6) of s 30. When this complaint was brought up in the court below the court rejected it. We have examined the award of the Industrial Court and the analysis over four pages of the unrebutted evidence of the witness of the company as to the financial implication and effect on the industry, the effect on the economy of the country which anticipated further reduction of the tariff on imported tyres or even removal of tariffs to accord with obligations under the World Trade Organization, the need to be competitive, the need to increase the work force for the company's operations, that the employees will not be financially disadvantaged as they will have more rest days and more overtime. The unrebutted evidence also shows that the other companies, one of which a tyre company, Sime International Tyre, had also adopted the system and the tyre company increased its production. We note that the Industrial Court specifically referred to the requirement of s 30 of the Act to have regard to the public interest, the financial implication and the effect on the economy of the country and on the industry concerned and also the probable effect in related or similar industries and to act according to equity and good conscience and the substantial merits of the case without regard to technical or legal form and held the requirements as having been met. We also are of the view that the requirements have been met. The finding is a straight forward finding and we are in full agreement with the High Court that there is no ground whatsoever to interfere with such a finding. We have to remind litigants that the High Court in its review jurisdiction is not an appeal court.

A Did the Industrial Court answer the question remitted to it? The High Court said it did so. The Union said it did not but had instead answered some other questions.

At the beginning of this judgment we reproduced the sole question that was requested by both parties jointly to be referred by the Minister to the B Industrial Court for its decision — whether the company should be allowed to implement the Rota Work System. And the Industrial Court did just that. The said Court stated:

> The court is satisfied that the proposal of the company to introduce the Rota Work System is a bona fide exercise of its management function. In doing so it does not contravene any regulatory or other law. The fact that it may vary a C past practice of treating Sunday as a rest day does not bring it within the ambit of ss 33 or 56 of the Industrial Relations Act 1967. Therefore it does not require special circumstances.

Then in reference to sub-ss (4) and (5) of s 30 of the Act (we have already discussed that before) the Industrial Court cautioned:

D > Therefore the court having considered the requirements of s 30(4) of the Act in particular the public interest the financial implications and the good effect the award would probably have on the economy of the country and the industry concerned and the court recognizing the substantial merits of the company's proposal as required by s 30(5) of the Act awards that the company be allowed to implement the Rota Work System.

E The learned judicial commissioner quite clearly was right in rejecting as baseless that the Industrial Court had failed to answer the question posed to it.

We have carefully read the award of the Industrial Court and gone through the judgment of the learned judicial commissioner and we find F absolutely no merit in any of the grounds pursued by the Union in attacking his decision. We dismiss the appeal with costs. Deposit to the account of taxed costs.

Appeal dismissed.

G Reported by Peter Ling

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